

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TINA M.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CASE NO. C20-5478-BAT

**ORDER REVERSING AND
REMANDING FOR FURTHER
ADMINISTRATIVE PROCEEDINGS**

Plaintiff Tina M. seeks review of the denial of her application for Supplemental Security Income and Disability Insurance Benefits. She contends the ALJ erred in evaluating the medical opinion evidence, finding that her mental impairments did not meet a listing, and assessing her residual functional capacity; she seeks remand for an award of benefits. Dkt. 18. The Court **REVERSES** the Commissioner's final decision and **REMANDS** the matter for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

DISCUSSION

A. Medical opinions

Plaintiff argues that the ALJ misevaluated the medical opinions regarding her mental and physical impairments. Dkt. 18 at 5. In general, the ALJ must give specific and legitimate reasons for rejecting a treating or examining doctor's opinion that is contradicted by another doctor, and

1 clear and convincing reasons for rejecting a treating or examining doctor's uncontradicted
2 opinion. *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1996).

3 *I. Mental impairments*

4 With respect to plaintiff's mental impairments, the ALJ evaluated opinions from
5 examining psychiatrist Mary Lemberg, M.D., examining psychologist Daniel Pratt, Psy.D., and
6 the state agency consultants. Plaintiff argues that the ALJ discounted Dr. Pratt's opinion without
7 explaining the stated reason and despite the fact that Dr. Pratt's opinion was consistent with Dr.
8 Lemberg's opinion, which the ALJ gave significant weight. Plaintiff also argues that the ALJ
9 erroneously gave significant weight to the consultants' opinions despite the fact that they relied
10 on Dr. Pratt in forming their opinion but found only moderate limitations where Dr. Pratt found
11 marked limitations Dkt. 18 at 5-6.

12 Dr. Pratt opined that plaintiff had moderate to marked limitations in most work activities
13 and rated the overall severity of her impairments as marked. Tr. 1211. The ALJ discounted Dr.
14 Pratt's opinion, finding, in full: "Little weight is given to these determinations, as they appear
15 heavily influenced by the claimant's subjective complaints rather than objective medical
16 assessments." Tr. 70. The ALJ gave no explanation for this finding nor any other reason for
17 discounting this opinion.

18 An ALJ does not provide an adequate reason for rejecting an examining doctor's opinion
19 by questioning the credibility of the patient's complaints where the doctor does not discredit
20 those complaints and supports his ultimate opinion with his own observations. *Edlund v.*
21 *Massanari*, 253 F.3d 1152, 1159 (9th Cir. 2001). Dr. Pratt did not call into question the
22 credibility of plaintiff's statements to him. To the contrary, he noted that plaintiff's score on the
23 Rey-15 test suggested adequate effort in performing to her full potential and indicated a lower

1 likelihood of malingering. Tr. 1212. And Dr. Pratt supported his opinion with his own
2 observations and clinical assessment, including the results of the mental status examination he
3 administered. Tr. 1212-13.

4 Moreover, an ALJ does not give a specific reason for rejecting an opinion by merely
5 stating it is unsupported by sufficient objective findings. *See Embrey v. Bowen*, 849 F.2d 418,
6 421-22 (9th Cir. 1988). The ALJ must do more than offer her conclusions; she must also explain
7 why her interpretation, rather than the treating doctor's interpretation, is correct. *Orn v. Astrue*,
8 495 F.3d 625, 632 (9th Cir. 2007) (citing *Embrey*, 849 F.2d at 421-22). The ALJ's conclusory
9 statement that Dr. Pratt's opinion appeared to be heavily influenced by plaintiff's subjective
10 complaints was both inaccurate and insufficient to reject an examining doctor's opinion. The
11 ALJ erred by rejecting this opinion without giving specific and legitimate reasons for
12 discounting it.

13 The state agency consultants opined that plaintiff would have difficulty remembering
14 more complex instructions; she could remember and complete simple repetitive tasks; she could
15 interact with the public appropriately on a superficial basis; and she would do best in a
16 predictable working environment. Tr. 223-24, 237-39, 254-55, 268-69. The ALJ gave these
17 opinions significant weight, finding that they were supported by the limited mental health
18 treatment documented in the record and Dr. Lemberg's findings. Tr. 71. Plaintiff argues that this
19 assessment was erroneous because the consultants cited primarily to Dr. Pratt's evaluation in
20 developing their opinions but found only moderate limitations where Dr. Pratt found marked
21 limitations. Dkt. 18 at 6-7. The Court finds that the reevaluation and reweighing of the medical
22 opinions required by the ALJ's error in rejecting Dr. Pratt's opinion will necessarily entail a
23 reweighing of the consultants' opinions. The ALJ shall reevaluate these opinions on remand.

1 2. *Physical impairments*

2 With respect to plaintiff's physical impairments, the ALJ evaluated records from
3 plaintiff's worker's compensation claim. Among these records was an orthopedic examination,
4 in which the doctor opined that plaintiff could return to regular duty with restrictions. Tr. 941-43.
5 The ALJ gave this opinion "substantial but not significant weight," finding that it was detailed
6 and supported by objective evidence, but the record supported additional limitations. Tr. 70. The
7 ALJ gave partial weight to the remainder of the opinions contained in the worker's compensation
8 records, noting that these opinions ranged from plaintiff being able to return to full duty without
9 restrictions, to being able to return to modified duty, to being unable to work. *Id.* The ALJ
10 further noted that the Social Security Administration is subject to different rules and regulations
11 than the worker's compensation program and found that the other opinions in the worker's
12 compensation records did not contain adequate explanation for their findings. *Id.*

13 Plaintiff argues that the ALJ erred in discounting the other opinions in the worker's
14 compensation records because this "likely" refers to the opinions of treating providers, which
15 "suggests" that the ALJ improperly discounted the opinions of treating doctors without a specific
16 basis for doing so. Dkt. 18 at 7-8. Plaintiff also argues that the fact that the worker's
17 compensation program is subject to different rules and regulations than the Social Security
18 Administration is a blanket statement that, without more, does not provide a reason to reject a
19 medical opinion. *Id.* at 8.

20 Plaintiff's assertion about what was "likely" contained in these records and what the
21 ALJ's reasoning "suggests" is speculative and is not sufficient to establish error in the ALJ's
22 decision. A claimant waives an argument by failing to develop it. *See Ve Thi Nguyen v. Colvin*,
23 No. C13-882 RAJ-BAT, 2014 WL 1871054 at * 2 (W.D. Wash., May 8, 2014) (unpublished)

1 (citing *Vandenboom v. Barnhart*, 421 F.3d 745, 750 (8th Cir. 2005) (rejecting out of hand
2 conclusory assertion that ALJ failed to consider whether claimant met listings because claimant
3 provided no analysis of relevant law or facts regarding listings); *Perez v. Barnhart*, 415 F.3d
4 457, 462 n. 4 (5th Cir. 2005) (argument waived by inadequate briefing); *Murrell v. Shalala*, 43
5 F.3d 1388, 1389 n. 2 (10th Cir. 1994) (perfunctory complaint fails to frame and develop issue
6 sufficiently to invoke appellate review)). Plaintiff does not identify specific opinions that the
7 ALJ improperly rejected, explain how the ALJ erred in finding that the opinions were not well
8 supported by explanation, or explain how the ALJ's rejection of these opinions was harmful to
9 her claim. Plaintiff has waived this argument by failing to do more than speculating as to what
10 the ALJ's errors might have been. The Court declines to further consider the argument.

11 Plaintiff also asserts that various notations in the record and her testimony indicate
12 limitations regarding her ability to sit, stand, walk, and perform postural movements. Dkt. 18 at
13 8. She points to worker's compensation records, her reports to Dr. Lemberg, and treatment notes
14 documenting findings such as numbness and muscle spasms. *Id.* An ALJ must explain why
15 "significant, probative evidence has been rejected," and must explain why uncontroverted
16 medical evidence is rejected. *Vincent v. Heckler*, 739 F.2d 1393, 1395 (9th Cir. 1984). However,
17 while the ALJ must "make fairly detailed findings in support of administrative decisions to
18 permit courts to review those decisions intelligently," the ALJ "need not discuss all evidence
19 presented." *Id.* at 1394-95. Plaintiff has not established, simply by pointing to treatment notes the
20 ALJ did not discuss, that the ALJ erred in assessing the medical evidence or that there were
21 functional limitations the ALJ should have included but did not.

1 **B. Step three**

2 The ALJ found at step three that plaintiff's impairments did not meet or equal a listed
3 impairment. Tr. 65. The ALJ considered whether plaintiff's mental impairments met listings
4 12.04, 12.06, and 12.15 and found that with respect to the paragraph B criteria, plaintiff had
5 moderate limitations in all four functional areas, and that plaintiff also did not meet the
6 paragraph C criteria. Tr. 65-66.

7 Plaintiff argues that these findings are against the great weight of the medical evidence.
8 Dkt. 18 at 10. She asserts that the ALJ erred by relying on plaintiff's subjective reports to find
9 only moderate limitations even though the ALJ rejected Dr. Pratt's evaluation because it relied
10 on those same subjective reports. *Id.* And she noted that Dr. Pratt, whose opinion the ALJ
11 improperly rejected, found marked limitations in areas of concentration, persistence, and
12 maintaining pace, interacting with others, and the ability to adapt. *Id.* at 11. She argues that if the
13 ALJ were to properly credit this opinion, the ALJ would be required to find that her mental
14 impairments meet or equal the listings. *Id.* She argues in the alternative that her mental
15 impairments also meet the paragraph C criteria. *Id.* at 11-12.

16 The Court agrees that the ALJ's erroneous rejection of Dr. Pratt's opinion requires a
17 reevaluation of whether plaintiff's mental impairments meet or equal the listings. This opinion is
18 highly probative of the issue. However, because Dr. Pratt's opinion is but one component of that
19 assessment, the Court declines to direct a finding that plaintiff is disabled at step three.

20 **C. Remand for further proceedings**

21 Plaintiff argues that the ALJ's errors in evaluating the medical evidence mean the ALJ's
22 RFC finding and finding of non-disability are not supported by substantial evidence and the
23 decision must therefore be reversed and remanded. Dkt. 18 at 12-14. She further argues that an

1 remainder of the five-step disability evaluation process as necessary. The ALJ shall further
2 develop the record as the ALJ deems necessary and appropriate to make a new decision.

3 DATED this 28th day of January, 2021.

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6 BRIAN A. TSUCHIDA
7 Chief United States Magistrate Judge
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